

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. **Claims 1, 3-5, 7-8** are rejected under 35 U.S.C. 102(b) as being anticipated by Girardet (Cuisine Spontanée, 1985).
3. **Regarding claim 1**, Girardet discloses a packaged food product comprising:
  - a. Two or more solid food components in a sauce or gel (pgs. 36-37, step 9), wherein said food components are placed separately in a relatively flat can or tray having a single cavity for receiving pet food material(pgs. 36-37 step 8), and wherein said solid food components are maintained in visually discrete groups within said cavity.
4. **Regarding claim 3**, Girardet further discloses that the first solid food component is a meat derived from poultry (pgs. 36-37 step 8), and that another solid food component comprises vegetables (pgs. 36-37 step 8).

5. **Regarding claim 4**, Girardet discloses that the solid components are surrounded by a sauce or gel (pgs. 36-37 aspic steps 8-10), to embed the meat pieces in a savory matrix.

6. **Regarding claim 5**, Girardet discloses that the gel or sauce contains flavoring agents, such as herbs, meat, and vegetables (page 249, see ingredient list).

7. **Regarding claim 7**, Girardet discloses a method of producing a packaged food product, the method comprising the steps of:

b. Providing a package in the shape of a relatively flat can or tray, and having a single cavity for receiving food material (pgs. 36-37 step 8); and placing said solid food components in visually discrete groups within said cavity (pgs. 36-37 step 9).

8. **Regarding claim 8**, Girardet further discloses that the packaged food product includes two or more solid food components in a sauce or gel (pgs. 36-37 steps 8-10), wherein one solid food component is meat derived from poultry (pgs. 36-37 step 9); and one further solid food component comprising vegetables (pgs. 36-37 step 9).

*Claim Rejections - 35 USC § 103*

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

11. **Claim 2** is rejected under 35 U.S.C. 103(a) as being unpatentable over Girardet ('Cuisine Spontanée').

12. Girardet discloses the food product of claim, but fails to disclose that the tray has a width to depth ratio of at least 3:1.

13. However it would have been obvious to one having ordinary skill in the art at the time of the invention to adjust the width to depth ratio of the tray for the intended purpose, since it has been held that discovering the optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F. 2d 272, 205 USPQ 215 (CCPA 1980).

14. **Claim 6** is rejected under 35 U.S.C. 103(a) as being unpatentable over Girardet ('Cuisine Spontanée) in view of May (WO 98/05219).

15. Girardet discloses the food product of claim 4, wherein the sauce or gel is substantially comprised of water (pages 36-37, 249).
16. Girardet fails to disclose that the sauce comprises starch, vegetable gums, or agar.
17. However, May discloses producing a gravy for pet food comprising water and starch (page 2 lines 35-36).
18. It would have been obvious to one having ordinary skill in the art at the time of the invention to combine the sauce or gel disclosed by Girardet with the addition of starch as disclosed by May, because the addition of starch allows the producer to adjust the viscosity of the gravy for the intended use (May page 3, lines 1-6).

*Conclusion*

19. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
20. US 3,910,141 (regarding the shingling of the meat products)
21. US 5,502,181 (regarding gelling agents)
22. US 5,314,705, US 6,605,307 B2, (arrangement in container)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDREW KRAUSE whose telephone number is (571)270-7094. The examiner can normally be reached on 7:30-5, off every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Del Sole can be reached on (571)272-1130. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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